



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

October 5, 2022

MEMORANDUM

SUBJECT: Limited Impartiality Determination for Mather Air Force Base

FROM: Justina Fugh
Alternate Designated Agency Ethics Official and
Director, Ethics Office

TO: Grant Cope
Senior Counselor to the Administrator

On May 3, 2022, I issued an impartiality determination to permit you to participate in certain specific party matters involving your former employer, the California Environmental Protection Agency (CalEPA), provided that you do not participate in any specific party matters on which you had previously worked personally and substantially while employed by them. I noted, however, that in the event that EPA believes it has a compelling reason for your participation as an EPA official, then you may ask OGC/Ethics to reconsider that determination on a case-by-case basis.

I understand that officials in the Office of Land and Emergency Management (OLEM) wish to discuss certain aspects of a specific party matter – Mather Air Force Base -- in which you had been involved previously while at CalEPA. OLEM employees wish to engage with you on background and to gain insights into navigating the relationships among the parties involved at this site. Consequently, you have asked me to consider an impartiality determination for this specific party matter.

Prior to your selection as Senior Counselor to the Administrator, you served as Deputy Director of the Department of Toxic Substances Control for CalEPA. Pursuant to Executive Order 13989 and the Biden Ethics Pledge that you signed upon appointment, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of “former employer.”¹ Therefore, the Ethics Pledge does not apply to your CalEPA employment.

What remains, however, is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635,

¹ See Exec. Order 13989, Section 2(k), which provides that “‘former employer’ does not include...State or local government.”

specifically Subpart E, “Impartiality in Performing Official Duty.” You have a “covered relationship” with CalEPA pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year after you resigned from CalEPA, absent an impartiality determination from an EPA ethics official, you cannot participate in any specific party matter in which CalEPA is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in gaining your unique insights outweighs any concerns about your impartiality. I am authorizing you to participate as Senior Counselor to the Administrator in discussions with OLEM, including Ms. Anne Heard, about Mather Air Force Base, but on background only, to discuss the history of the specific party matter and the relationships among the various parties. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2018, you served as Deputy Director of the Department of Toxic Substances Control at CalEPA and managed the statewide cleanup program. From 2013-2018, you served as Deputy Secretary for Environmental Policy at CalEPA. States share responsibility with EPA in protecting human health and the environment, and EPA works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – You have a defined benefit plan with the State of California. Although you have a financial conflict of interest pursuant to 18 U.S.C. § 208, it is not disqualifying. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA’s experience, it is unlikely you will be in any position to affect the State’s ability or willingness to pay benefits to its retirees.

Nature and importance of the employee’s role – As Senior Counselor, you serve as a key advisor to the Administrator. In this role, you are expected to communicate freely among EPA’s offices to assist them, as appropriate, as they carry out their respective duties.

Sensitivity of the matter – While sensitivities regarding your impartiality are heightened when you are asked to participate, even on background, on a specific party matter that you worked on personally and substantially for CalEPA, OLEM has communicated their interest in seeking your historical background, insights and views to inform their considerations.

Difficulty of reassigning the matter to another employee – You are uniquely positioned to speak to OLEM, thus furthering the Agency’s interests. In this situation, there is no other EPA employee who can provide the same insights and site background.

Under this limited authorization, you are authorized to participate in background discussions with Ms. Heard and OLEM about the Mather Air Force Base specific party matter and the relationships of the parties involved. You are reminded to be mindful of your bar obligations, including rules 1.6 (confidentiality of information), 1.9 (duties to former clients) and 1.11 (special conflicts of interest for former and current government officers and employees). OGC/Ethics does not provide professional responsibility advice, so you will need to consult your own bar counsel about any applicable parameters.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

cc: Anne Heard, Senior Advisor, OLEM